

09/730,338

MS154757.1

REMARKS

Claims 1-39 are currently pending in the subject application and are presently under consideration. Claims 1, 13, 26, 28, 29 and 38 have been amended herein, while claims 12, 31 and 39 have been cancelled. A complete listing of the claims showing the changes made in revised amendment format can be found at pages 3-9. Additionally, the specification has been amended herein at page 3 to correct a minor typographical error.

Applicants' representative notes with appreciations the indication that claims 5, 8, 22-25, 34 and 37 would be allowable if recast in independent form, including all of the limitations of the base claim and any intervening claims. Nevertheless, it is believed such amendments are not necessary in view of the below-noted novel aspects of the invention as recited in the independent claims vis-à-vis the cited art. However, applicant's representative reserves the option to recast claims 5, 8, 22-25, 34 and 37 at a later date if necessary.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

I. Objection to Claims 28, 29, and 38

Claims 28, 29, and 38 stand objected to for informalities. Appropriate amendments have been made herein to cure the informalities. Accordingly, this objection should be withdrawn.

II. Rejection of Claims 1-4, 6, 7, 9-21, 26-33, 35, 36, 38, and 39 Under 35 U.S.C. §102(b)

Claims 1-4, 6, 7, 9-21, 26-33, 35, 36, 38, and 39 stand rejected under 35 U.S.C. §102(b) as being anticipated by Koenig (U.S. 5,923,874). Withdrawal of this rejection is respectfully requested at least because Koenig fails to disclose, teach, or suggest the subject invention as recited by the claims.

For a prior art reference to anticipate, 35 U.S.C. §102 requires that *"each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."* In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950 (Fed. Cir. 1999) (quoting *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987))

09/730,338

MS154757.1

(emphasis added). *"The identical invention must be shown in as complete detail as is contained in the ... claim."* Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989) (emphasis added).

Koenig fails to disclose, teach, or suggest *replicating the configuration setting to the plurality of members*, as recited by amended claim 1; *selection of performance metrics in the first component being propagated to the member specific configuration of each of the plurality of members*, as recited by claim 16; *setting a configuration at one of the plurality of members ... and replicating the configuration to each of the plurality of members*, as recited by amended claim 26; *propagating the performance metric settings to a plurality of remaining members* of an entity to establish performance metric configuration settings at the plurality of members, as recited by claim 32; and *means for replicating the configuration to each of the plurality of members*, as recited by amended claim 38. The Examiner incorrectly asserts that the abstract (lines 4-11) discloses these limitations. In fact, the abstract simply discloses collecting and transmitting reportable data (i.e., performance data such as use and load) to a first data server by a second data server, which is then passed to a reporter facility. Such a disclosure is not germane to replicating or propagating configuration settings to a plurality of entity members. Therefore, claims 1, 16, 26, 32, and 38 (as well as claims 2-11, 13-15, 17-25, 27-30, 33-34, 36-37 depending directly or indirectly thereon) are allowable as Koenig fails to disclose and/or teach each and every claim limitation. Accordingly, this rejection should be withdrawn.

09/730,338

MS154757.1

CONCLUSION

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063.

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicants' undersigned representative at the telephone number below.

Respectfully submitted,

AMIN & TUROCY, LLP



Himanshu S. Amin

Reg. No. 40,894

AMIN & TUROCY, LLP
24TH Floor, National City Center
1900 E. 9TH Street
Cleveland, Ohio 44114
Telephone (216) 696-8730
Facsimile (216) 696-8731